

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SAMUEL TRUJILLO,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-09-625-R
)	
GREG PROVINCE, Warden,)	
)	
Respondent.)	

ORDER

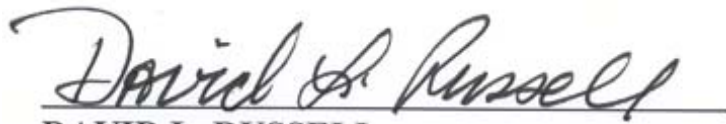
Before the Court are the Report and Recommendation of United States Magistrate Judge Valerie K. Couch entered September 28, 2009 [Doc. No. 15] and Petitioner's Objection to the Report and Recommendation filed October 16, 2009 [Doc. No. 16]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Petitioner's Objection. Petitioner asserts that the one-year limitations period should be tolled because he needed trial transcripts and records for his state court post-conviction application, which was not filed until after the one-year period for filing his habeas petition had expired.

Judgment of conviction of petitioner was entered on July 22, 2003. Petitioner's conviction did not become final until April 18, 2005. Petitioner has failed to explain why he could not obtain copies of his trial transcript and records before April 18, 2006, when the one-year AEDPA statute of limitations expired, so that he could have filed his post-conviction application before that date and obtained the benefit of tolling of the AEDPA period. Nor has Petitioner shown or attempted to show that he used due diligence to obtain

those transcripts and records. Even assuming that equitable tolling could be employed in the manner suggested by Petitioner, Petitioner is not entitled to it.

In accordance with the foregoing, the Report and Recommendation [Doc. No. 15] is ADOPTED in its entirety, Respondent's motion to dismiss the Petitioner herein is GRANTED and the Petition is DISMISSED as untimely.

IT IS SO ORDERED this 20th day of October, 2009.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE